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Attorneys for Plaintiff Liberty Media Holdings, LLC

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IO GROUP, INC., a California corporation,)
CHANNEL ONE RELEASING, Inc., a)
California corporation and LIBERTY)
MEDIA HOLDINGS, LLC., a California)
corporation,)

Plaintiffs,
vs.

GLBT, Ltd., a British limited company,)
MASH and NEW, Ltd., a British limited)
company, PORT 80, Ltd., a company of)
unknown origin or structure, STEVEN)
JOHN COMPTON, an individual living in)
the United Kingdom, and DAVID)
GRAHAM COMPTON, an individual)
living in the United Kingdom.)

Defendants.)

CASE NO.: C-10-1282 (MMC)(DMR)

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR ORDER DIRECTING
RECEIVER TO LEVY UPON AND
AUCTION THE DOMAIN NAME
REGISTRATIONS HE CURRENTLY
HOLDS**

Date: August 23, 2013

Time: 9:00 a.m.

CtRm: 7, 19th Fl.

1 TO: DEFENDANTS GLBT, LTD., MASH AND NEW, LTD, PORT 80, LTD, JOHN
2 COMPTON AND DAVID GRAHAM COMPTON:

3 PLEASE TAKE NOTICE THAT ON August 23, 2013 at 9:00 a.m., or as soon thereafter
4 as the matter maybe heard in the above-entitled Court located at 450 Golden Gate Avenue, San
5 Francisco, California, 94102, Courtroom 7, 19th Floor, PLAINTIFFS IO GROUP, INC.,
6 CHANNEL ONE RELEASING, INC. and LIBERTY MEDIA HOLDINGS, LLC, will and hereby
7 do move this Court for an Order directing the receiver to levy upon and auction the domain name
8 registrations gayforit.com, itsallgay.com, and jerkyourtube.com with the proceeds being disbursed
9 to Plaintiffs in satisfaction of the judgments previously entered in this action.
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12 This motion is based upon this Notice of Motion and Motion, the accompanying
13 Memorandum of Points and Authorities, the Declaration of D. Gill Sperlein, all matters of which
14 this Court may take judicial notice, all pleadings and papers on file in this action, and upon such
15 other evidence and argument as may be presented to the Court at the time of the hearing.
16

17 **PROCEDURAL AND FACTUAL HISTORY**

18 Plaintiffs an action for copyright infringement against Defendants for violations occurring
19 by and through three websites the Defendants owned and operated- gayforit.com, itsallgay.com,
20 and jerkyourtube.com (the domains).
21

22 Defendants initially defended against the action, but later stopped participating in the
23 litigation. Before abandoning their defense, Defendants dissipated the sole assets they held in the
24 United States by transferring the operation of the websites from US-based .com domains to
25 European-based .eu domains. See, Plaintiff's Motion for Temporary Restraining Order, ECF No.
26 84, *in passim*. This Court entered a Preliminary Injunction finding that Plaintiffs' were likely to
27 succeed on the merits and ordered the control of the registrations for all the websites to be turned
28

over to a Court-appointed receiver. Order Granting in Part Plaintiffs' Motion for Preliminary Injunction, ECF No. 103. Defendants ignored the Order, and have been accumulating contempt sanctions at the rate of \$1,000 a day since October 12, 2011. Order re Contempt, ECF No. 123.

Upon the Court's order, the domain name registry in the United States delivered the domain name registrations for the three U.S. domain names to the receiver, who currently holds the registrations. Declaration of D. Gill Sperlein in Support of Motion for Order to Levy(Sperlein Decl.) at ¶3. The .eu domain names remain in the control of the Defendants and they continue to operate their infringing websites at those domains. *Id.* at ¶2.

The Court ordered default against the three business entity defendants and granted Plaintiffs' motion for summary judgment against the individual Defendants. ECF No. 209. The Court entered three judgments, one in favor of each Plaintiff and jointly and severally against all Defendants. Each judgment is in the amount of one million, seven hundred eighty-seven thousand, seven hundred forty-seven dollars and forty-two cents. (\$1,787,747.42). ECF Nos. 211-213. Defendants did not appeal and have not made any payment on the judgments. Sperlein Decl. at ¶4. Writs of execution have been issued on each of the three judgments. ECF Nos. 225-227.

RELIEF REQUESTED

Plaintiff's request an order directing the Receiver in this action to auction the three domain name registrations he currently holds and to disburse the proceeds from the sale of the domain name registrations to the Plaintiffs in partial satisfaction of the judgments entered in this action.

ARGUMENT

"State law has been applied under Rule 69(a) to garnishment, mandamus, arrest, contempt of a party, and appointment of receivers," when such actions are undertaken in aid of executing on

1 a judgment. *In re Merrill Lynch Relocation Mgmt., Inc.*, 812 F.2d 1116, 1120 (9th Cir.1987); *see*
 2 *also Edmonston v. Sisk*, 156 F.2d 300, 301 (10th Cir.1946) (applying Rule 69(a), and state law, to
 3 appointment of receiver in aid of an action for execution); 12 Charles Alan Wright, Arthur R.
 4 Miller & Richard L. Marcus, Federal Practice and Procedure § 3012 at 148–49.

6 “Federal Rule of Civil Procedure 69 governs procedures on execution of a judgment and,
 7 for the most part, directs the district court to look to state rules.” *Office Depot Inc. v. Zuccarini*,
 8 596 F.3d 696, 700 (9th Cir. 2010).

9 “Rule 66 governs the appointment of a receiver in federal court. It provides: These rules
 10 govern an action in which the appointment of a receiver is sought or a receiver sues or is sued.
 11 But the practice in administering an estate by a receiver or a similar court-appointed officer must
 12 accord with the historical practice in federal courts or with a local rule. An action in which a
 13 receiver has been appointed may be dismissed only by court order.” *Id.* at 701.

14 The federal rules, including Rule 66, qualify as federal statutes under Rule 69(a). *Id.*, citing
 15 *Bair v. Bank of Am. Nat’l Trust & Sav. Ass’n*, 112 F.2d 247, 249–50 (9th Cir.1940). “Therefore,
 16 Rule 66 prevails over any state law to the extent it applies.” *Id.*

17 *Office Depot* primarily addressed whether it was proper to appoint a receiver in a
 18 jurisdiction without personal jurisdiction over the defendant for the purpose of levying upon and
 19 auctioning domain name registrations to satisfy a judgment. Here, the question of personal
 20 jurisdiction is not an issue as personal jurisdiction was established in the underlying litigation.
 21 The only question then is whether it is proper for the receiver, who has already been appointed and
 22 who already holds in his possession the domain name registrations in question, to auction the
 23 domain name registrations and disburse the proceeds to the Plaintiffs in partial satisfaction of the
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1 judgments. In accordance with the Ninth Circuit's disposition of the *Home Depot* case, the answer
 2 is clearly yes.

3 The Ninth Circuit wrote,

4
 5 "[W]e have already held that domain names are intangible property
 6 under California law. *Kremen v. Cohen*, 337 F.3d 1024, 1030 (9th
 7 Cir.2003). In *Palacio Del Mar Homeowners Ass'n, Inc. v. McMahon*,
 8 174 Cal.App.4th 1386, 1391, 95 Cal.Rptr.3d 445 (2009), a California
 9 *702 Court of Appeal held that domain names do not constitute property
 10 subject to a turnover order because they cannot be taken into custody.
 11 The court in *Palacio Del Mar* based its holding on a reading of
 12 California Civil Procedure Code § 699.040, which provides that, with
 13 respect to a turnover order, property must "be levied upon by taking it
 14 into custody." However, the court left open the question whether
 domain names constitute intangible property generally, and it cited
Kremen with approval. Moreover, the "taking it into custody" language
 in § 699.040 does not appear in § 708.620, which governs the
 appointment of receivers. We conclude that *Kremen* is still an accurate
 statement of California law, and that *domain names are intangible*
property subject to a writ of execution." *Id.* at 701-02, *emphasis added*.

15 There are a number of companies that enable owners of a domain name registrations to
 16 auction those registrations on line. Sperlein Decl. at ¶5. The auctions take place over a period of
 17 time, thereby allowing the domain name registration holder to obtain the highest price possible
 18 from potential domain name purchasers. *Id.*

19
 20 In light of the fact that domain name registrations are intangible property subject to a writ
 21 of execution under California law, that the Court appointed receiver already holds the domain
 22 name registrations in his possession, and writs of execution have been issued, Plaintiffs request an
 23 order directing the receiver to auction the domain name registrations and apply the proceeds to the
 24 satisfaction of the three judgments issued in the underlying action.

25
 26 Plaintiffs/Judgment Creditors request that they be permitted to make credit bids on the
 27 domain name registrations and that if a Judgment Creditor's bid is higher than any bid from a
 28 bona fide buyer, that the Judgment Creditor may take possession of the domain name registration

1 and the amount of the judgment in favor of that Plaintiff/Judgment Creditor shall be reduced by
2 the amount of its credit bid.

3
4 Respectfully submitted,

5
6 7/9/2013

/s/ D. Gill Sperlein

7 Dated: _____

8 D. Gill Sperlein
9 The Law Offices of D. Gill Sperlein
10 Attorneys for Plaintiffs Io Group, Inc. and
11 Channel One Releasing, Inc.

12 7/9/2013

/s/ Laura Bielinski

13 Dated: _____

14 Laura Bielinski
15 Brownstein Hyatt Farber Schreck, LLP
16 Attorneys for Plaintiff Liberty Media Holdings, LLC

17 I obtained the assent of Laura Bielinski to file this document with her signature affixed.

18 7/9/2013

/s/ D. Gill Sperlein

19 Dated: _____

20 D. Gill Sperlein
21 The Law Offices of D. Gill Sperlein
22 Attorneys for Plaintiffs Io Group, Inc. and
23 Channel One Releasing, Inc.